



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

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Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND
HARRY HUGHES
Governor

DECISION

DECISION NO.: 392-BH-84
DATE: April 13, 1984
APPEAL NO.: OP-191
S.S. NO.:

CLAIMANT: Richard L. Joy

EMPLOYER: Atlantic Vinyl Repair Service.
7002 Westmoreland Ave.
Takoma Park, MD 20012

L.O. NO.: 43
APPELLANT: CLAIMANT

ISSUE: Whether the claimant has made a false statement or represent-
ation, knowing it to be false, or has knowingly failed to dis-
close a material fact to obtain or increase any benefit or other
payment within the meaning of §17(e) of the law, and whether or
not the claimant has received \$5,844.00 in benefits to which he
was not entitled within the meaning of §17(d) of the law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN
PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN
MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 13, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Richard L. Joy - Claimant
Linda Haspel - Attorney
Legal Aid Bureau

EMPLOYMENT SECURITY ADMINISTRATION
Barbara Gremour - Claims Special

## EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as the Employment Security Administration's documents in the appeal file.

### FINDINGS OF FACT

The claimant applied for benefits effective March 9, 1980. He received a total of 36 weeks of benefits, including both regular and Extended Benefits. The claimant began part-time self-employment with the Atlantic Vinyl Repair Service on April 1, 1980. The Atlantic Vinyl Repair Service had \$1,029.00 gross sales in April of 1980, \$990.00 in May of 1980 and \$970.00 in October of 1980. The expenses of the Atlantic Vinyl Repair Service exceeded its income during the time periods in question.

The claimant performed services for Atlantic Vinyl Repair Service on a part-time basis. He spent the majority of his time looking for a full-time job. In addition, the claimant obtained a part-time job with E & X Exxon.

The claimant reported his earnings from his part time job with E & X Exxon. He also reported during an eligibility review interview that he was self-employed at the Atlantic Vinyl Repair Service. He did not report any earnings from the Atlantic Vinyl Repair Service because there were none.

During the year 1980, Atlantic Vinyl Service had gross sales of \$2990.00. The claimant provided information that Atlantic Vinyl Repair Service incurred expenses of \$826.86. The net proceed from Atlantic Vinyl Repair Service, therefore, were \$2,163.14.

### CONCLUSIONS OF LAW

The Board concludes that the claimant had no intention of making false statements to the agency for the purpose of increasing his unemployment insurance benefit. The claimant reported that he was self-employed and he also reported wages he made at another part-time employment. The Board concludes that he was attempting to comply with the requirements of the law.

There is no disqualification in the Maryland Unemployment Insurance Law for being "self-employed." In the Marie Gleason case, (1033-BH-81), the Board held that the mere fact that a claimant is self-employed or attempting to start his own business, in the absence of any evidence that he is performing services for which wages are being paid or payable, does not automatically disqualify the claimant within the meaning of §20(1) of the law.

The Board finds in this case that the claimant did perform services in his own business for which he was remunerated. This remuneration should have been reported by the claimant on his claims cards and deducted from his benefit amount under §20(1) and §3(b)(3) of the law. In determining what remuneration the claimant received, the Board deems it appropriate to place the burden on the claimant to show why the gross sales of the venture should not be deemed his wages under §20(1) of the law. In this case, the claimant has provided proof only of \$826.86 in expenses. The Board will therefore conclude that the difference of \$2,163.14 is the net proceeds of the business and was the earnings of the claimant during the period during which he filed claims. Over the 36 week period during which the claimant filed claims, this amount averages \$60.00 per week in earnings in self-employment. The claimant's benefit amount should therefore be reduced by \$60.00 for each of the 36 claim weeks in question. This deduction is in addition to the deduction made for part-time work at E & X Exxon.

Ordinarily, a person spending a significant amount of time building up his own business will be disqualified from benefits under §4(c) of the law. In this case, however, the evidence is insufficient that the claimant was spending enough time on the business for it to be a disqualification under §4(c) of the law.

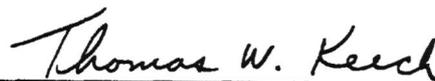
#### DECISION

The claimant did not make false statements, knowing them to be false within the meaning of §17(e) of the Maryland Unemployment Insurance Law. He is not disqualified under this section of the law.

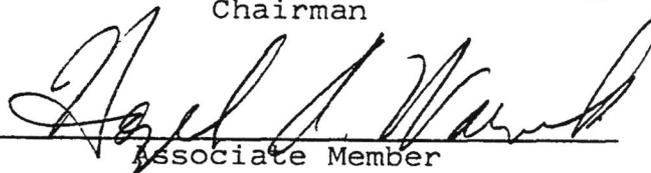
The claimant had earnings in employment in the amount of \$60.00 for the Atlantic Vinyl Repair Service for each of the 36 weeks during which he filed claims in 1980. His benefits should be further reduced by this amount, under §3(b) of the law, subject to the provisions of §3(b)(3) of the law.

The claimant will be determined overpaid under §17(d) of the law, pursuant to the calculations in the above paragraph.

The decision of the Appeals Referee is modified.



Chairman



Associate Member

K:W  
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

"UNEMPLOYMENT INSURANCE - WHEATON

Linda Haspel, Esquire  
Legal Aid Bureau, Inc.



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
383 - 5040

BOARD OF APPEALS

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Appeals Counsel

GARY SMITH  
Chief Hearings Officer

- DECISION -

STATE OF MARYLAND  
HARRY HUGHES  
Governor  
KALMAN R. HETTLEMAN  
Secretary

CLAIMANT: Richard L. Joy

DATE: Nov. 6, 1981

APPEAL NO: OP-191

S.S. NO:

EMPLOYER: Atlantic Vinyl Repair Service

L. O. NO: 43

APPELLANT: Claimant

ISSUE: Whether the claimant has made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to obtain or increase any benefit or other payment within the meaning of Section 17(e) of the Law.  
Whether the claimant was unemployed within the meaning of Section 20(1) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTHEUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 23, 1981

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Richard L. Joy - Claimant  
Linda Hospel ~ Attorney  
- Legal Aid Bureau, Inc.

Present

FINDINGS OF FACT

The claimant filed a claim for benefits, effective March 9, 1981. His weekly benefit amount was determined to be \$106.00.

The claimant obtained a State of Maryland retail tax number, effective April 1, 1980. He is the owner of a Atlantic Vinyl Repair Services and reported gross sales on a staggerly quarterly basis as follows:

April, 1980	\$1,029.00
May 1980	990.00
October, 1980	971.00

His license was still valid with the State of Maryland as of an investigation which started January 13, 1981.

The claimant started this business and spent from four to ten hours a week working and promoting it. He filed for and received unemployment insurance checks for the claim weeks ending April 4, April 12, April 19, April 26, May 3, 10, May 17, May 24, May 31, June 7, June 14, June 21, June 28, July 5, July 12, July 19, July 26, August 2, August 9, 1980 in the amount of \$106.00 for each week.'

He filed for partial benefits for the week ending August 16, 1980 and receiving \$42.00. Again, he filed for partial 'benefits for week ending August 23, 1980 in the amount of \$63.00.

He filed for benefits August 30, received \$106.00; for week ending September 6, 1980 he received \$76.00 partial, for week ending September 20, 1980. he received \$106.00 and for the week ending September 27, 1980 received -\$31.00 partial. For these twenty-five weeks benefits paid to the claimant were \$2,438.00.

He also received extended benefits of \$106.00 for the claim weeks ending October 4, October 11, October 18, October 25, November 1, November 8, November 15, November 22 and November 29, 1980, December 6 and December 13, 1980, a total of eleven weeks at \$106.00 each week making a total of \$1,166.00.

The complete amount paid to the claimant was \$2,438.00 plus \$1,166.00 total \$3,644.00.

On the weekly claim card in answer to the question did you work during the week shown on the reverse side. The claimant indicated No. He contended that he reported that he was establishing a business on the Eligibility Review Forms and felt that this was not work done for other individuals. In fact, he was self-employed and establishing business and stated that the amounts reported to the Retail Sales Tax Division were substantially correct.

COMMENTS

The evidence supports a conclusion that the claimant knowingly failed to disclose a material fact in order to obtain unemployment insurance benefits for the claim weeks in question. His answers on his weekly report card only suggest that he intended to veil the fact that he was working for these weeks in question when he answered No to the question, Did you work during the week shown on the reverse side? The fact that he reported on his Eligibility Review Forms that, in effect, he was intending to establish a business and this would not change this situation. Therefore, the determination of the Claims-Examiner must be affirmed.

It must be concluded that the claimant was not unemployed as he was "self-employed. Therefore, benefits must be denied from April 1, 1980 through December 13, 1980. The Claims Examiner will be affirmed.

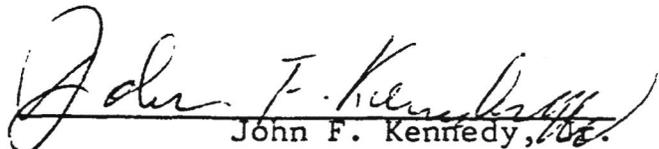
DECISION

The determination of the Claims Examiner that the claimant knowingly failed to disclose a material fact in order to obtain unemployment insurance benefits for the claim weeks ending April 5, April 12, April 19, April 26, May 3, May 10, May 17, May 24, May 31, June 7, June 14, June 21, June 28, July 5, July 12, July 19, July 26, August 2, August 9, August 16, August 23, August 30, September 6, September 20, and September 27, 1980 in the total amount of \$2,438.00 in regular unemployment insurance payments and for the claim weeks ending October 4, October 11, October 18, October 25, November 1, November 8, November 15, November 22, November 29, 1980, December 6, December 13, 1980 extended benefis in the total amount of \$1,166.00 complete total \$3,644.00 is affirmed.

The claimant is overpaid under Maryland Unemployment Insurance Law in the amount of \$3,644.00. This amount must be repaid to this Agency.

Benefits are denied from July 6, 1981 to July 5, 1982.

The determination of the Claims Examiner that the claimant was not unemployed within the meaning of Sections 4 and 20(1) of the Law is affirmed. Benefits are denied from April 1, 1980 through December 13, 1981.

  
John F. Kennedy, *Esq.*  
Appeals Referee

NOTE: This decision does not preclude the Employment Security Administration from instituting civil or criminal action against the claimant under the provisions of Section 17(e) of the Maryland Unemployment Insurance Law.

Dates of hearing: 8/25/81 and 10/27/81  
m~/4228

9103

Copies mailed to:

Claimant  
Employer  
Unemployment insurance - Wheaton

Recoveries Section

Linda Haspel, Esquire  
Legal Aid Bureau, Inc,